

# Chancellor's Year in Review 2022/2023

## Natural resources and the environment

The global climate crisis and the right to use natural resources (fish stocks and wild game) were among the central issues in petitions sent to the Chancellor last year. Besides this, people were still concerned about environment conservation related property restrictions and cutting of forest.

In a [written presentation](#) to the Riigikogu Environment Committee, the Chancellor dealt with several central and repeated issues. Hopefully, finding solutions to these problems will begin as early as this autumn.

## Climate protection

Climate protection and the related 'green transition' raise hopes in people. However, there is also room for concern as people fear crippling restrictions, additional expenses involved in home renovation, or whether and what kind of car they will be able to afford in the future.

The green transition action plan is not a law. A plan does not impose any restrictions or duties. Even while preparing an action plan, it should be kept in mind that if any of the planned activities restrict people's rights or impose a duty on people then the relevant restriction or duty must be laid down by law. This is required by the Constitution (sections 3, 11, 31 and 32). In addition, the socio-economic impact of planned restrictions or duties must be ascertained. Exceptions, too, must be established by law.

For example, if the state wishes to improve energy consumption, the starting point could be those population groups in the case of whom the biggest savings would be achieved by incurring reasonable expense. When planning investments involved in green transition, it is necessary to observe that expenses should not exceed expected savings. It could be considered probable that in some instances – for example when renovating an old wood-heated farm building – the environmental cost exceeds the expected energy savings. Well-considered and justified exceptions should be established for such situations.

It is not conducive to achieving the aims of the green transition if more resources are eventually spent in the name of environmental efficiency than can be saved at the end of the day, or if too many harmful side effects arise in implementing the aims. The Chancellor submitted a [written presentation](#) on climate protection and restrictions on fundamental rights to the Riigikogu on 16 January 2023 and introduced it to the parliament on 19 March 2023.

Estonia has assumed several nature and climate protection related obligations to be met by a certain deadline. For example, one of the objectives is to achieve climate neutrality, i.e. a situation where anthropogenic greenhouse gas emissions are balanced out by removal of emissions. Fulfilling this obligation presumes that private individuals, too, must reorganise their activities because the obligations assumed also concern entrepreneurship: mining, energy, transport, building, housing, waste management, and industry.

Under § 3 of the Estonian Constitution, people's rights and freedoms may only be restricted in a predictable manner and on the basis of law. Imposing duties and prohibitions that have a significant impact on people's life arrangements presumes an adaptation period which is longer than normal. This means that a law establishing significant duties and prohibitions must be adopted, promulgated and published in sufficiently good time before it enters into effect. Sometimes the constitutionally required time for adaptation may even be several years.

Deadlines for meeting obligations assumed by Estonia are approaching but so far no relevant provisions have been added to the laws regulating the above-mentioned areas. So it may happen that soon it will probably no longer be possible to impose duties or prohibitions on businesses or other persons without considerable compensation because the time for adjusting to changes is too short.

According to businesses, indications in terms of the need to reorganise their activities have been given to them through development plans or even simply on the basis of a coalition agreement. However, neither a development plan nor a coalition agreement confers any rights or imposes any duties on anyone. The adaptation period does not begin to run from adoption of a development plan or a coalition agreement. The start of the adaptation period can be counted only from the moment when a law is published in the *Riigi Teataja* gazette. The law must prescribe in sufficient detail what is allowed and what is prohibited in a certain area as of a certain deadline. For example, the Earth's Crust Act may lay down restrictions on

oil shale mining and grounds for refusal to issue mining permits.

Restrictions with a significant social and economic impact must be understandable, the procedure and principles for establishing them must be known, and a necessary adaptation period or compensation must also be laid down. Businesses need legal clarity and legal certainty so as to be able to choose a course of action, dare to make investments and be able to source and train competent workers.

Local authorities, too, need to be able to know as far in advance as possible what kind of entrepreneurship having an impact on climate status will be allowed in the upcoming decades, whether a large employer needs to close down or reorganise their operations, and what possibilities exist to attract businesses to a city or rural municipality. Clearly worded objectives and the rights and duties needed to attain them must be set by law.

The purpose of the Chancellor's presentation was to remind the Riigikogu, state agencies and businesses, as well as the public, that so far legislation contains no norms necessary for fulfilling the objectives assumed by Estonia, and that adoption and enforcement of those norms will presumably take time. Nor can a law be replaced by development plans or other documents because nothing can be required from private persons based thereon, nor can restrictions be imposed on the basis of an abstract general law or regulation.

Certainly, only the Riigikogu can decide whether the duties and restrictions necessary for achieving climate neutrality should be established through sectoral laws or a new law created for this purpose. The package of amendments to all sectoral laws may also be called a climate law if the intention is to combine and adopt all those amendments simultaneously. In terms of legislative drafting technique, the interests of private persons can be better protected if rules in different areas are adopted through separate laws. A so-called cluster law (package law) also involves risks in terms of constitutional review: upon finding an unconstitutional provision in a cluster law, the President of the Republic must refuse to promulgate the whole law. This means that even for constitutionally compliant provisions the adaptation period before entry into force is postponed.

It may also happen that some provisions requiring large-scale readjustments would end up in the Supreme Court for constitutional review – this, too, constitutes a normal course of events in state matters. Thus, introducing some changes has become extremely urgent even at this stage if the state does not wish to abandon fulfilling obligations assumed or to pay compensation.

## Hunting

Disputes still arise about extending the right to use a hunting district and fair competition in granting the right to use a hunting district.

It is vital that permits for the right to use a hunting district should be issued in line with legal certainty and as a result of a transparent process. The state may not unlawfully distort competition between hunting societies. The executive cannot arbitrarily impose conditions on granting someone the use of limited public resources or overlook the conditions laid down by the Riigikogu.

The Chancellor sent recommendations on implementing the Hunting Act to the Ministry of the Environment and the Environmental Board (by letter of [11 March 2022](#), [1 July 2022](#) and [20 September 2022](#)) and asked the Environmental Board to bring its administrative practice into line with the Hunting Act.

People have asked the Chancellor how those in charge of state lands (the State Forest Management Centre, the Land Board) should act when granting use of state-owned hunting areas so as to ensure fair competition between hunting societies.

The Chancellor [found](#) that the State Assets Act applies to state assets in all cases not regulated by a special law (see § 2(3) State Assets Act). The Hunting Act does not contain provisions to the effect that the State Forest Management Centre or the Land Board should necessarily grant use of state land to those hunting societies who have obtained a right to use a hunting district on the basis of the transition provisions of the Hunting Act. Permits for the right to use a hunting district issued on the basis of transition provisions were in force to 31 May 2023 but, in the future, permits must be issued in line with the rules of the current law.

A landowner may impose conditions on hunting on their land and they may also prohibit hunting. An owner may also propose changing the user of a hunting district and changing the borders of a hunting district. The Hunting Act does not distinguish between the rights and

duties of a private landowner and of the state as landowner, nor does it prohibit landowners from entering into contracts with several hunting societies. Thus, on their immovable the state or a private owner can prohibit hunting, or allow hunting, as well as impose conditions on hunting at their discretion.

The state must also assess and weigh the feasibility of granting the use of its immovables for hunting purposes. The State Assets Act requires that an administrator of state assets must ensure that state land is administered in accordance with the aims of its administration, expediently, sustainably and prudently (§ 8(1) State Assets Act). This obligation must also be taken into account when granting use of land to a hunting society. The conditions for use of state-owned hunting areas must be made public for all to see. All decisions on granting use of state lands for hunting purposes must be made publicly and transparently and the lawfulness of decisions must be judicially verifiable (in the administrative court) because state-owned land constitutes a limited public resource.

A representative of the executive (e.g. the Environmental Board, the State Forest Management Centre, or the Land Board) cannot arbitrarily prevent competition between hunting societies for the right to use a hunting district by having the state preclude competition for a public resource (i.e. use of state land). The tasks of a landowner are laid down by the State Assets Act. Proceedings for allowing use of state-owned land for hunting purposes may not lead to a situation where the purpose of the Hunting Act is unfulfilled but, instead, the only interests taken into account are those of hunting societies who have obtained the right to use a hunting district on the basis of transition provisions. A competing hunting society may also comply with the interests of the state as landowner, i.e. be prepared to fulfil the applicable contractual conditions for hunting set by the State Forest Management Centre and the Land Board (for instance, compensate game damage to a larger extent than prescribed by law).

Restrictions imposed on the use of state-owned land and which change the competitive situation must be based on a clear legal basis and the Riigikogu must have compelling reasons for establishing such restrictions. Currently, no such grounds are laid down by the Hunting Act. For this reason, granting use of state land must be based on the State Assets Act (in some cases also the Forest Act for the purposes of generating income).

Of course, only the administrative court can make a binding assessment of each specific case of extending or refusing a permit granting the right to use a hunting district. Indeed, several

such current disputes have ended up in court.

## Fishing

In late autumn last year, the Chancellor received several petitions concerning the change of organisation of professional fishing on Lake Peipus, Lake Lämmijärv and Lake Pskov.

To the end of 2022, the state allocated the use of fish stocks on the basis of the so-called Olympic fishing method. This means that all professional fishers were allowed to fish until the quota set by the state for a certain area was exhausted. This way a fisher's catch depended on their own skills and quality of fishing gear.

Since 2023, the system of individual quotas was introduced for certain fish species. Now, eligible fish stocks are allocated among the fishing gear of professional fishers. Fishing gear is allocated among fishers on the basis of historical fishing rights. However, this change has worsened the situation of those fishers who have invested in high-quality fishing gear and are motivated and skilful but can only use a small part of their historical fishing rights. These fishers can no longer rely on the extent to which they would be able to fish but must proceed from the share allocated to their fishing gear.

The issue is whether the change of previous fishing arrangements was constitutional and whether the changes could enter into force immediately without leaving businesses any time to adjust to the changes.

Misgivings have also been expressed as to whether the Government in its regulation observed the objectives set by the Riigikogu. With this regulation, the Government laid down opportunities for professional fishing, allowable annual catches, and the fee rates for fishing rights for 2023.

The Chancellor [noted](#) that the Riigikogu may change applicable fishing arrangements if a sufficient transition period for this is set and restrictions on entrepreneurship are proportionate. She recommended that the Riigikogu should also elaborate on the delegating norm laid down by § 47(1) of the Fishing Act to ensure greater clarity as to the objectives based on which the executive should in the future intervene in the organisation of professional fishing.

The state must carefully analyse the experience gained in 2023 so as to be able to decide whether the objectives sought by the changes have been attained. If necessary, amendments

to legislation must be made. Currently, no reason exists to consider the transfer to individual quotas as disproportionate. However, if the objectives of the law are not attained by individual quotas in the future, then no reason exists to consider the applicable fishing arrangements as constituting an appropriate, necessary and narrowly proportional restriction of freedom of enterprise.